

**PT 07-17**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>MORNINGSTAR MISSION</b>	)	No.	06-PT-0013
<b>MINISTRIES, INC.,</b>	)		(05-99-1)
Applicant	)	PINs	07-15-105-013
v.	)		07-15-105-012
<b>THE DEPARTMENT OF REVENUE</b>	)	John E. White,	
<b>OF THE STATE OF ILLINOIS</b>	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Jerome Georgen appeared, *pro se*, for Morning Star Mission Missionaries, Inc.; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue

**Synopsis:**

This matter arose after Morning Star Mission Ministries, Inc. (MSM or Applicant) protested the Illinois Department of Revenue's (Department) denial of its application for a non-homestead property tax exemption for property MSM owned during calendar year 2005, and which is situated in Will County, Illinois. The issue is whether the property was used exclusively for religious or charitable purposes during that period.

The hearing was held at the Department's offices in Chicago. MSM presented documentary evidence consisting of books and records and other documents, as well as the testimony of witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the exemption be denied.

**Findings of Fact:**

1. MSM is a religious organization. Applicant Exs. 2 (copy of March 13, 1998 letter from the Office of the Illinois Attorney General notifying MSM that it a religious organization exempt from filing annual financial reports pursuant to the Illinois Charitable Trust and Solicitations Acts); 4 (copy of MSM's bylaws).
2. MSM's bylaws provide the following Corporate Objectives:

The objective of this organization shall be to conduct a nondenominational mission to aid, assist, and care for men, women, and children in need, on a temporary basis, insofar as our means will permit and without discrimination as to race, creed, color, sex, national origin, or handicap. The physical assistance shall consist principally of lodging, meals, and clothing. Spiritual guidance shall be offered, thus affording the opportunity for spiritual, mental, and moral advancement. These primary aids shall be supplemented by but not restricted to the following:

1. Crisis Shelter
2. Rehabilitation/work therapy
3. Alcoholic victorious meetings
4. Personal counseling
5. Bible study
6. Evening gospel services
7. Aid to all persons in need as the particular situation warrants

Applicant Ex. 4, p. 3 (Art. III).

3. MSM is exempt from Illinois' occupation and use taxes, and has been issued an exemption identification number by the Department. *See* Department Ex. 2, p. 1 (Part 2) (exemption number included on exemption application form).
4. MSM filed a form PTAX-300, Application for Non-homestead Property Tax Exemption – County Board of Review Statement of Facts (exemption application form, or application), in August 2005, seeking an exemption from Illinois property tax for real property having the following two PINs: 07-15-105-012 and

- 07-15-105-013. Department Ex. 2 (original form PTAX-300).
5. MSM described the specific activities that take place on the property as being: “staff housing[.]” Department Ex. 2, p. 1.
  6. Marilyn Farmer is, and during 2005 was, MSM’s executive director. Hearing Transcript (Tr.), p. 11 (Farmer).
  7. MSM submitted its application to the Will County Board of Review (Board). *Id.*; Applicant Ex. 5 (copy of letter, dated November 11, 2005, from the Board to MSM) (10/11/05 letter). After considering it, the Board submitted MSM’s application to the Department, for a final review, and also notified MSM of its recommendation. *Id.*
  8. In its 10/11/05 letter to MSM, the Board notified MSM that it recommended that MSM’s property be granted an exemption. Applicant Ex. 5. Specifically, the Board recommended a partial year exemption for the property, for the period from April 29, 2005 through December 31, 2005. Applicant Ex. 5. On its application, MSM stated it became the owner of the property having the PIN of 07-15-105-013 on April 29, 2005.
  9. The Board also referenced in its 10/1/05 letter two additional parcels of property, which are not described on MSM’s application, and which other properties have PINs of 07-15-106-009 and 07-15-106-010. Applicant Ex. 5.
  10. After its application had been presented to the Department for review, Farmer submitted an affidavit to the Department that provided: [MSM] purchased 9 Melchior, Joliet, IL 60433. PIN# 07-15-105-013 is used for staff housing as of January 1, 2006.” Department Ex. 4, p. 1.

11. The Department denied MSM's application, after concluding that the property described in the application was not in exempt use. Department Ex. 1.
12. Among other activities, MSM provides transitional living to persons in need for periods ranging from one to twenty-four months. Tr. pp. 12-13; Applicant Ex. 4, p. 3. Farmer described the transitional living as part of its objective to try to help area homeless, poor, and those recovering from substance abuse, become self-sufficient. Tr. pp. 12-14.
13. The property at issue contains one of three houses at which MSM provides transitional living. Tr. pp. 12-15.
14. The local zoning board for the City of Joliet requires MSM to have an employee reside in property at which it provided transitional living, as a condition of issuing MSM special use zoning permits for such properties, including the property having the PIN of 07-15-105-013. Tr. pp. 26-30; *see also* <http://www.cityofjoliet.info/City-Government/Ordinance.swf> (.pdf copy of the City of Joliet's Revised Zoning Ordinance), pp. 16-29 (Art. V of Ordinance, setting forth, *inter alia*, uses permitted within single-family residential districts).
15. An MSM employee resides in each house MSM uses for transitional living. Department Exs. 1, 4; Tr. pp. 13-15, 28-30.
16. One of the properties MSM owns and uses for its transitional living program was purchased subject to an existing lease with a tenant under a lease that was part of what is commonly known as section 8 housing. Tr. pp. 23-24; *see also, e.g.*, <http://www.hud.gov/groups/landlords.cfm> (United State Department of Housing and Urban Development website, screen titled, "Information for landlords").

17. As of the date of the hearing, which was held in January 2007, MSM was in the process of having an employee reside at the house in which the section 8 tenant resided in 2005. Tr. p. 31.
18. No evidence was offered to show whether the house situated on the property having the PIN of 07-15-105-013 is the house in which the section 8 tenant resided in 2005 — and which, as of January 2007, was just in the process of having an MSM employee assigned to reside therein.
19. MSM has a written housing policy that provides:

**Housing Policy for [MSM]**

1. Housing will be assigned on an individual basis according to the professional, technical, and administrative needs in support of the facility's mission.
2. Employees do not have a property interest in mission housing and assignment to or placement of an employee in mission housing does not give employees[s] a property interest in such housing.
3. Employee housing is provided as a benefit to the mission, and not for the benefit of the employees.
4. In all cases, persons living in mission housing are to be [MSM] employees or their dependent(s) according to the terms of this policy.
  - a) Dependents are limited to the spouse of the employee and any legal children [that] are eighteen (18) or younger, or if in school, are twenty[-]one or younger.
  - b) Occupants may not sublet the premises under any circumstances.
  - c) Persons other than their immediate family will not be permitted to occupy their residences, unless specifically authorized by the Executive Director.
5. Employees residing in mission housing may be required to work more than a regular work schedule without additional compensation at the Executive Director's discretion; however, if the employee is covered by the Fair Labor Standards Act (FSLA) and required to work more than forth (40) hours in a work wee[k], he/she will be compensated in accordance with state pay policies or [MSM] must have an agreement in place with the employee.

6. If[t] should be clearly understood that housing is owned by the mission, and each occupant is expected to exercise good judgment regarding his/her conduct.
7. Occupants are responsible for the care, appearance and cleanliness of their assigned dwelling.
8. Provision of consumable supplies associated with the normal cleaning and maintenance of the dwelling are the responsibility of the occupant.
9. No changes, additions or deletions to the existing structure exceeding one hundred dollars in total cost annually may be made to any housing without prior written approval of the Executive Director and the board of trustees.
10. Conduct of guests on the premises which would reflect negatively on the mission will not be tolerated and may result in eviction of the resident.
11. Employees are individually responsible for the room or areas to which they are assigned, to include it[s] contents and the maintenance of the room, in such a way as to reflect good sanitation and housekeeping standards.
12. Electrical appliance[s], lights, etc. are to be turned off when room is not occupied.
13. The occupant must report immediately to the executive director or his designee.
14. The mission will be responsible for:
  - a) Providing for trash removal from the premises. All trash will be collected and deposited in one location and time by the employee as determined by the Executive Director for said removal.
  - b) Repairing or replacing, as determined by the mission[,], any plumbing, heating, cooling and/or electrical equipment or appliances supplied by the state that is obsolete or becomes unserviceable through normal wear, tear and use as may be determined by the mission.
  - c) Providing water, electric, and other necessary utility services to the premises and paying all utility fees and charges incident thereto.
  - d) Providing insect and/or rodent extermination service for the dwelling as may be determined by the mission to be necessary.
15. The employee is responsible for:
  - a) Providing labor and materials for routine (day to day) maintenance and/or cleaning (i.e. cleaning and waxing floors, vacuuming rugs, replacing light bulbs,

- washing windows, etc). If special equipment is needed to perform any routine maintenance and/or cleaning, the state may provide the equipment if it is already available.
- b) The occupant is responsible for maintaining personal property insurance on his/her personal property items.
16. Eviction: Grounds for termination of housing must include deliberate failure of the employee to comply with any provision of the herein stated rules and regulations, the employee will be given notice that states the reason for termination. Such termination does not preclude disciplinary action if warranted.
17. Vacating Housing:
- a) When a tenant decides to vacate mission housing, he/she will notify the Executive Director's office in writing at least fourteen (14) days prior to vacating the unit. The Executive Director will assign an employee to conduct a complete inventory of all mission property assigned to the unit and report any discrepancies prior to the employee vacating the property.
  - b) Floors will be swept, vacuumed, and/or mopped.
  - c) Garbage, litter, etc., will be removed from the premises.
  - d) All cabinets will be emptied and shelving wiped clean.
  - e) All mission furnished appliances will be cleaned.
  - f) Bathroom(s) will be cleaned.
  - g) All damage caused by the tenant, must be repaired at the tenant's expense.
  - h) The term of the housing agreement will automatically expire when the employee is transferred, terminated, or retires. Notice of such transfer, termination, or retirement of any employee living in mission housing will constitute notice of termination of the housing agreement.

Department Ex. 3 (copy of MSM's written Housing Policy).

### **Conclusions of Law:**

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285,

821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). Among the classes of property that the legislature may exempt from taxation is property used exclusively for religious purposes, and property exclusively for charitable purposes. Ill. Const. Art. IX, § 6 (1970).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides, in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(a) Property used exclusively for:

- (1) religious purposes, or
- (2) school and religious purposes, or
- (3) orphanages

qualifies for exemption as long as it is not used with a view to profit.

(b) Property that is owned by

- (1) churches or
- (2) religious institutions or
- (3) religious denominations

and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

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35 ILCS 200/15-40.



The legislature also passed an exemption creating an exemption for property used exclusively for charitable purposes, which provides, in part:

§ 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.

An applicant that has been granted an exemption under this subsection on the basis that its bylaws provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services may be periodically reviewed by the Department to determine if the waiver or reduction was a past policy or is a current policy. The Department may revoke the exemption if it finds that the policy for waiver or reduction is no longer current.

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35 ILCS 200/15-65.

The Department denied MSM's application for an exemption for the property at issue after determining that the property was not in exempt use. Department Ex. 1. Thus, MSM has the burden to show, *inter alia*, that the property was actually and exclusively used for religious or charitable purposes during the period at issue. 35 ILCS 200/15-40, 15-65; Eden, 213 Ill. 2d at 287, 821 N.E.2d at 248.

### **Issues and Analysis**

Here, the Department does not claim that MSM is not an exclusively religious organization, it just concluded that it was not using the property exclusively for religious and/or charitable purposes. This conclusion is based, first, on the Department's argument that the only documentary evidence purporting to show exempt use — Farmer's affidavits — reflect that such use began in 2006, after the period for which it sought an exemption. Tr. pp. 35-36. The Department also asserts that no exclusively charitable use of the property exists because there was no documentary evidence showing that MSM's employees had to reside within a house on the property as a condition of their employment. Tr. p. 36. Finally, the Department argues that there was no exclusively religious use because § 15-40's allowance for an exemption of property owned by a religious organization and used as residences is limited to residences required to be used by a religious organization's ministers, whereas no ministers reside on the property at issue here. *Id.*

MSM argues that its provision of shelter, food and education to area homeless and poor at its transitional living houses constitutes a charitable use of its property. Tr. pp. 34-35. It counters the Department's contention that nothing in writing requires MSM's employees to live in the housing that is used for transitional living by arguing that that

requirement arises from the zoning commission's condition that staff must provide on-site supervision of those being served at the transitional living houses. *Id.* It also asserts that church services, prayer meetings, and bible studies were conducted on the property. Tr. p. 37.

I first note that there appears to be some confusion regarding which property is embraced by this dispute. MSM argued that this matter involves three separate houses (Tr. p. 34; Applicant Ex. 5), whereas the Department's denial and MSM's exemption application each identify only two parcels. Department Exs. 1-2. The exemption application form, itself, reflects that the property for which an exemption was being sought includes one, one-story residence, with a basement, consisting of 833 square feet of ground area. Department Ex. 2, p. 1 (Part 3, line 17). Other evidence in the record certainly suggests that MSM filed exemption application forms for other parcels of property (*see* Applicant Ex. 5), but there is no evidence of what the Department might have concluded regarding those other applications. *See* Department Ex. 1. The Department's denial — like MSM's exemption application form — identifies only those properties having the PINs of 07-15-105-012 and 07-15-105-013. Department Exs. 1-2. Thus, this recommendation pertains only to the properties identified on Department Exs. 1-2, which are those having PINs of 07-15-105-012 and 07-15-105-013. Further, I make no recommendation regarding any applications for exemption MSM might have made regarding the parcels of property having PINs of 07-15-106-009 and 07-15-106-010. Applicant Ex. 5.

Statutes granting real estate tax exemptions are strictly construed in favor of taxation. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390, 146 N.E.2d 73, 79

(1957). The party claiming the exemption must prove by clear and convincing evidence that it falls within the constitutional authorization and the terms of the statute under which it claims exemption. Eden Retirement Center, Inc., 213 Ill. 2d at 285, 821 N.E.2d at 247; Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986). Individual claims for tax exemption must be determined from the facts presented. MacMurray College v. Wright, 38 Ill. 2d 272, 278, 230 N.E.2d 846, 850 (1967).

Here, I agree with the Department that there was no documentary evidence establishing that MSM used the property described in its application exclusively for religious or charitable purposes during 2005. In Farmer's affidavit, she avers that the property was so used "as of 2006" — but it says nothing about any such purported exempt use in 2005. Department Ex. 4. Nor was there any documentary evidence showing, for example, which clients were being provided with transitional living on the property during 2005, or the length of time such person(s) actually stayed at such property.

Moreover, the record does not disclose which house, of the three that MSM said were part of this dispute, was the house at which Farmer testified MSM was just then — in January 2007 — in the process of assigning an employee to reside in, so such transitional living could be provided. Tr. pp. 28-31. If, in fact, MSM lawfully could not provide transitional living without having an employee reside at the house where such transitional living would be provided, then Farmer's testimony that MSM was, in early 2007, just in the process of assigning an employee to reside in one of its houses, constitutes an admission that it could not have been using one of the houses primarily for exempt purposes before such an employee began to reside there, including during 2005.

Since, based on this record, I can only guess whether the property identified within MSM's exemption application form included the house at which MSM now tacitly concedes was not being used for any exempt purpose until sometime in 2007, I am unable to conclude that MSM subjected the property at issue to any exempt use in 2005. *See Antioch Missionary Baptist Church v. Rosewell*, 119 Ill. App. 3d 981, 982, 457 N.E.2d 500, 501 (1<sup>st</sup> Dist. 1983). ("evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose.").

Since I conclude that this record supports a conclusion that MSM failed to offer clear and convincing evidence showing that it actually used the property identified in its application for any exempt purposes during 2005, I recommend that the Director finalize the Department's prior denial of that exemption application. I leave for another day the resolution of the additional issues suggested by the parties' closing arguments.

**Conclusion:**

I conclude that MSM has not satisfied its burden to show that the property was used exclusively for religious or charitable purposes during 2005. Therefore, I recommend that the Director finalize the Department's denial of MSM's application for a property tax exemption, and that the property remain taxable for all of 2005.

Date: May 2, 2007

John E. White  
Administrative Law Judge